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VIA Electronic Filing: <http://www10.tceq.state.tx.us/epic/efilings>

ATTN: Agenda Docket Clerk

TCEQ Office of the Chief Clerk; MC 105

P.O. Box 13087

Austin, TX 78711-3087

RE: TCEQ Docket No. 2010-0403-IWD
Reply to Executive Director's and OPIC's Responses to Hearing Requests
Application of Navarro Generating LLC for a Gas-Fired Power Plant in Navarro County
TPDES Permit No. WQ0004870000

Dear Agenda Docket Clerk:

The following reply in the above named and numbered matter is filed on behalf of Citizens Opposed to Power Plants, COPPs for Clean Air (COPPs), and KIDS for Clean Air.

I. Requests for Contested Case Hearing

Citizens Opposed to Power Plants and COPPs for Clean Air (COPPs) obviously support the Executive Director's (ED's) and Office of Public Interest Counsel's (OPIC's) recommendation that these groups qualify for associational standing.

KIDS for Clean Air (KIDS) likewise supports OPIC's recommendation that this group also qualifies for associational standing because its identified member "is concerned that the wastewater from the proposed plant will adversely affect his and his family's aesthetic enjoyment of the Richland-Chambers Reservoir and surrounding recreation areas. This includes, but is not limited to, adverse effects to his and his family's general enjoyment of the outdoors such as hiking, fishing, nature-watching and camping." Despite this assertion, the ED's narrowly construes the standing requirement and recommends that KIDS does not qualify for associational standing because the hearing request does not "assert that Mr. Hammond recreates in the area or has even visited the area." The ED's recommendation improperly attempts to narrow associational standing to a specific phrase requirement. The Commission should reject the ED's recommendation and adopt OPIC's.

II. Relevant and Material Disputed Issues

The organizations agree that all the issues recommended by OPIC and the ED to be referred to SOAH at a contested case hearing should be referred. The organizations, however, disagree with the ED's improper narrowing of the scope of the issues to be referred to SOAH because the ED's recommendation fails to include

the proper scope and breadth of relevant and material disputed issues raised during the public comment process by these organizations.

During the public comment process, the organizations specified that:

Relevant and material disputed issues to be addresses at a hearing include the following:

- 1) The Application and Draft Permit do not comply with all federal and state laws and regulations.**
- 2) The Application and Draft Permit would cause health hazards, nuisances and/or other adverse effects to the public and environment.**
- 3) The Application and Draft Permit would allow contamination of ground and surface waters.**
- 4) The Application and Draft Permit do not comply with requisite analysis and use of best available technology.**
- 5) The Application and Draft Permit will allow violation(s) of water quality standards.**
- 6) The Application and Draft Permit will allow degradation of the receiving waters.**
- 7) Notice did not comply with all federal and state laws and regulations.**

The organizations then provided examples illustrating their questions, comments and concerns regarding the application and draft permit identified by the above disputed relevant and material issues. **The comments specifically stated that the provided examples are not to be construed as any limitation on the above relevant and material disputed issues.**

The Commission should specifically refer to SOAH all of the above listed relevant and disputed issue in addition to the issues recommended by both OPIC and the ED.

Moreover, the ED improperly recommends that "flooding concerns are not relevant and material"; however, it is highly relevant and material that the proposed discharge route's "bed and banks" cannot contain the wastewater. For example, this fact is highly relevant to the decision of which landowners qualify as affected persons, especially when the "bed and banks" are completely nonexistent at some points along the discharge route. As a result, more persons are affected by this permit than the ED's narrow recommendation acknowledges. Yet according to the ED's recommendation, only downstream property owners adjacent to the discharge route qualify as affected persons. However, other landowners located upstream, and even some not adjacent to the discharge route, will also be affected by the wastewater traveling its natural course along the proposed discharge route simply because the discharge route cannot contain the volume of wastewater the permit allows.

Similarly, **the potential impact on water quality caused by flooding related to this wastewater permit must be one of the issues referred to SOAH for hearing.** Even the Executive Director's Response To Comments (RTC) No. 36 specifically states that "TCEQ does not address flooding issues in the wastewater permitting process, **unless there is a potential impact to water quality.**" (Emphasis added).

The public comments specifically raise and dispute the potential impacts to water quality that was ignored during the permitting review process. For example, public meeting comments specifically addressed, *inter alia*, "the extra soil that is picked up, the extra pesticides that are picked up, the extra vegetation that is picked up, and sent to the receiving waters . . . of Little Pin Oak Creek, and also the Richland Chambers Reservoir"

as well as additional pollutants from roads and railroad crossings that will be flooded by the wastewater and impact the water quality of the receiving waters.

Also, pictures were provided which establish the fact that water pools within the discharge route. The Executive Director's RTC too narrowly addresses the disputed issues raised by these pictures and other public comments as merely "flooding issues". The Executive Director, however, should have addressed these facts more broadly as raising disputes about the draft permit's potential to adversely impact water quality because the agency staff made certain assumptions about the impact of the wastewater discharge. These assumptions include, but are not limited to, the concentration of pollutants that will reach the Richland-Chambers Reservoir as a result of this draft permit.

All of the application and agency assumptions, however, were called into question by the public comments and evidence provided. For example:

- It is highly likely that the discharge route may at times have low flow which would allow the pollutants in the wastewater discharge to pool and accumulate to a much higher concentrations until a small rain event causes the concentrated wastewater pollutants to finally reach the Richland-Chambers Reservoir. Under that highly likely scenario, the Richland-Chambers Reservoir will be subjected to potential water quality impacts that the Executive Director never considered – but should have – due to the public comments provided.
- Alternatively, the proposed wastewater discharge stream may actually cause the unnamed tributary of Little Pin Oak Creek and/or Little Pin Oak Creek to be a perennial water body, which could affect the designated uses assumed by the application as well as other assumptions.

The ED's narrow recommendation improperly overlooks the fact that the permit review process failed to analyze the potential impact to water quality—especially in light of the evidence provided at the public meeting that the wastewater will not remain within the identified discharge route's supposed "bed and banks".

In addition to the issues discussed above, the ED's recommendation excludes several other issues by generically claiming the issues "are not relevant or material . . . or they do not involve issues of fact." However, the ED's recommendation lists several issues that neither the recommendation nor the response to comments explain how an issue is deficient so as to allow the requestors an opportunity to properly respond. These issues include ED's identified issue nos. 31, 32, 34, 36, 40. The organizations dispute these relevant and material fact issues; and therefore, these issues should also be referred to SOAH.

III. Duration of the Hearing

Considering the number of individuals protesting this permit application and the number of issues that must be referred to SOAH, the organizations agree with OPIC that the maximum duration of the hearing should be at least one year from the first date of the preliminary hearing until the proposal for decision is issued. This is with the caveat that the Administrative Law Judge, of course, retains his/her discretion to extend the schedule if necessary in the interest of justice.

IV. Requests for Reconsideration

The organizations disagree with the ED's recommendation to deny all of the requests for reconsideration because the public comments successfully raised significant problems with the proposed permit. The

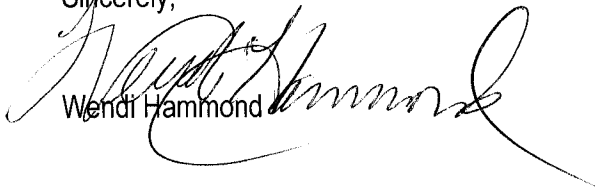
Commissioners should remand the permit and application back to the agency staff for further review in light of the potential impacts on the receiving water's water quality caused by the proposed discharge permits wastewater volume and inability of the discharge route to contain that volume. By remanding now, the Commissioners can save limited agency and state resources by mandating that the staff review this permit more closely in light of the overwhelming and disturbing public comments about the extent of the flooding problem and impact on water quality.

Conclusion

The permit should not be granted. Rather the matter should be reconsidered by the executive director, or alternatively, the matter should be sent to a contested case hearing with all of the issues discussed above.

Thank you for your attention to this matter. If you have any questions, feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Wendi Hammond', is written over the printed name. The signature is fluid and cursive, with a large loop at the end.

Wendi Hammond

CC: All listed parties as instructed by TCEQ's letter.